

REMARKS

Claims 41, 47, 48, and 51 have been canceled without prejudice or disclaimer. Those claims were canceled since they have already been obtained in U.S. Patent No. 5,556,772, which issued from applicants' parent application. Claims 33-40, 42-46, and 49-50 are pending in the application. Applicants acknowledge the Examiner's withdrawal of the rejection of claims 1-8 under 35 U.S.C. § 102(e).

In the Amendment filed December 2, 1996, Applicants agreed to file a terminal disclaimer in order to obviate any potential obviousness-type double patenting rejection based on U.S. Patent No. 5,556,772. Amendment of 12/2/96 at 5. Applicants enclose a terminal disclaimer executed by the Assignee of the entire right, title and interest in both the current '767 application and U.S. Patent No. 5,556,772.

The Examiner in the Office Action dated February 24, 1997, provisionally rejected claims 33-51 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1, 3, 5-8, and 33-49 of copending application Serial No. 08/164,290. Applicants respectfully traverse this provisional rejection.

Although Applicants believe that a patent issuing on application Serial No. 08/164,290 (the '290 application) cited by the Examiner would not qualify as a reference against the current application, Serial No. 08/529,767 (the '767 application) under 35 U.S.C. § 121, they respectfully request that the examiner follow the practice described in MPEP § 822.01 regarding an application in which the only remaining rejection is a provisional double patenting rejection. MPEP § 822.01

states as follows:

If the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

The provisional double patenting rejection over the copending '290 application is the only rejection remaining in the current application. Thus, Applicants request that the examiner follow the procedure stated in MPEP § 822.01 and withdraw the provisional double patenting rejection in the current case and allow a patent to issue. The examiner in the '290 application may then convert the provisional double patenting rejection into a double patenting rejection, and applicants will address the merits of the rejection in the '290 application alone, without the additional burden of addressing the rejection here.

In light of the above remarks, Applicants respectfully request that the Examiner withdraw the provisional rejection of claims 33-51 under the judicially created doctrine of obviousness-type double patenting.

In view of the foregoing remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims.

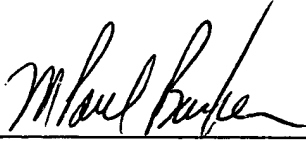
To the extent any further extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this response, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

LAW OFFICES

FINNEGAN, HENDERSON,
FARABOW, GARRETT
& DUNNER, L. L. P.
1300 I STREET, N. W.
WASHINGTON, D. C. 20005
202-408-4000

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: 
M. Paul Barker
Reg. No. 32,013

Dated: August 25, 1997

LAW OFFICES

FINNEGAN, HENDERSON,
FARABOW, GARRETT
& DUNNER, L.L.P.
1300 I STREET, N. W.
WASHINGTON, D. C. 20005
202-408-4000